

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

BROOKA STOKES

Plaintiff,

vs.

**CITIFINANCIAL a/k/a
WASHINGTON MUTUAL FINANCE;
GLENDA DUNCAN; and A, B, C, and/or D
being those persons, firms, corporations,
partnerships, or other entities responsible for
failure to satisfy the debt upon payment by
the Plaintiff; E, F, and/or G and those persons,
firms, corporations, partnerships, or other
entities responsible for notifying any and all
Credit Bureaus of the existence of the debt
which had been paid; G, H, and/or I and those
parties responsible for the acts complained of
herein, whose identities are otherwise unknown,
but who will be added by amendment when
ascertained,**

Defendants.

2007 JAN 19 A 11:05

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No. 3:06 CV1135-T

**RESPONSE TO ORDER OF COURT TO SHOW CAUSE AND
MOTION TO REMAND THE CIRCUIT COURT OF LEE COUNTY, ALABAMA**

COMES NOW the Plaintiff in the above styled cause, by and through her undersigned counsel, and moves this Court to remand this action back to the Circuit Court of Lee County, Alabama due to lack of jurisdiction in the Federal Court.

This Court and other Courts within the Eleventh Circuit favor remanding matters to State Courts where Federal jurisdiction is not absolutely clear. *Burns v. Windsor Insurance Company*, 31 F. 3rd 1092, 1095 (11th Cir. 1994). Although the Defendant in this matter would like to remove this case out of the Circuit Court of Lee County, Alabama, which has jurisdiction and where the wrong occurred, it is clear that the case should stay there nonetheless.

In the support of the Notice of Removal, the Defendants state that the matter is properly removable pursuant to 28 U.S.C. §1441, diversity jurisdiction. The Defendants allege there is

complete diversity of citizenship between the Plaintiff and Citifinancial, the Plaintiff being a resident of the State of Alabama and Citifinancial being a Maryland Corporation. However, the Defendant, Glenda Duncan ("Duncan"), is a resident of Alabama and a proper Defendant in this case.

Because Duncan is a proper Defendant to this case, complete diversity of citizenship does not exist and this matter should be remanded to State Court.

Pursuant to the order of this Court, the Plaintiff has been ordered to show cause as to why, pursuant to the Notice of Removal, the Defendant, Duncan, should not be dismissed as having been fraudulently joined.

Glenda Duncan is a Proper Defendant in this Case.

The Plaintiff in this case has made valid state law claims against Duncan. Discovery may reveal more, However, Plaintiff is able to show that a cause of action exists against Duncan and therefore is a proper Defendant with Citifinancial in this action. This matter involves claims that Duncan and Citifinancial continued to harass and slander the Plaintiff even after the matter was tried in the District Court of Lee County and Mrs. Stokes prevailed. In fact Mrs. Stokes obtained a Judgment against Citifinancial on the issue. A copy of the Judgment is attached as "Exhibit 1." A copy of the District Court Complaint and Answer are attached as "Exhibit 2."

The Complaint of the Plaintiff states that "At the trial on the matter, **Citifinancial, a/k/a Washington Mutual Finance** was represented by an employee of **Citifinancial**. At the trial of the matter, the payment of the debt by **Mrs. Stokes** was proved to the Court and the Court entered judgment for **Brooka Stokes** for \$350 on her counterclaim. The decision of the Court was entered in open Court and the employee of the Defendant was told of the fact that judgment was entered for **Brooka Stokes** and against the Defendant, **Citifinancial, a/k/a Washington Mutual Finance**. The said **Citifinancial, a/k/a Washington Mutual Finance** was notified in open court of the fact that judgment was rendered against it as previously alleged. The representative of **Citifinancial, a/k/a Washington Mutual Finance** is believed to be **Glenda Duncan** or a manager of **Citifinancial, a/k/a Washington Mutual Finance**. The pleadings in the case were signed by a person believed to be **Glenda Duncan**. **Citifinancial, a/k/a Washington Mutual Finance** did not appeal the judgment." The Complaint also alleges that even though there was a judgment in favor of Brooka Stokes against Citifinancial, Citifinancial still took the position that the debt was still owed and the burden was on Mrs. Stokes to show

that the debt had been paid. (A copy of Citifinancial's account summary, signed by Duncan, is attached as "Exhibit 3.") Through the actions of Glenda Duncan, both individually and as an employee of Citifinancial, Citifinancial continued to make collection efforts and demands against Mrs. Stokes as set forth in the Complaint. This was after Duncan was individually notified by the Court that Mrs. Stokes prevailed at trial. Count One of the paragraph demands judgment against the Defendants, plural, and not Citifinancial alone based upon the slander and publishing of the debt with false and defamatory statements.

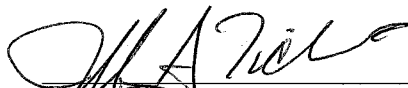
It is Duncan's actions or inactions that caused these defamatory statements to be made and it is believed upon further discovery that it can be shown that Duncan continued on with collection efforts on behalf of Citifinancial with the direct knowledge that a Judgment had been entered against Citifinancial and that the amount was not due and owing.

It is the Defendant's burden to show that there is no possibility of a valid state law claim against non-diverse Defendant to Plaintiff's Complaint. Not only have the Defendant's not met the burden, but it is clear that there are valid state claims against the non-diverse Defendant in this matter. Therefore, that this matter should be remanded back to the Circuit Court of Lee County Alabama.

The Amount in Controversy Requirement is Satisfied in the Present Action.

The Diversity jurisdiction amount in controversy requirement is not satisfied. In this case, the Plaintiff is seeking an unspecified amount of damages. Therefore, the Defendants' are required to show that "the amount in controversy more likely than not exceeds the jurisdictional requirement." *Tapscott v. MS Dealer Serv. Corp.*, 77 F. 3d 1353, 1357 (11th Cir. 1996). In this case, the Plaintiff has made a demand for both compensatory and punitive damages to be assessed by the trier of fact. The Defendants rely on a number of state and federal cases dealing with punitive and compensatory damages. However, the Defendant does not meet the burden of showing that the amount in controversy will more likely than not exceed the jurisdictional amount

Respectfully submitted,



JEFFREY G. TICKAL (TIC001)
Attorney for the Plaintiff, Brooka Stokes

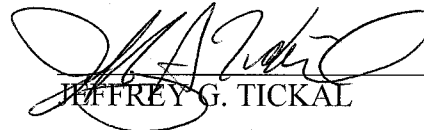
OF COUNSEL:

GULLAGE & TICKAL, LLP
511 Geneva Street
PO Box 711
Opelika, AL 36803-0711
334-737-3733
334-737-3766 fax

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion upon the following by depositing a copy of the same in the United States Mail, postage prepaid and properly addressed on this the 19th day of January, 2007.

Alan D. Leeth, Esq.
BURR & FORMAN, LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203


JEFFREY G. TICKAL

State of Alabama Unified Judicial System Form C-19 Rev 6/88	<h2 style="margin: 0;">NOTICE OF JUDGMENT</h2>	Case Number SM-04-1513
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IN THE _____ DISTRICT _____ COURT OF _____ LEE _____ COUNTY

Plaintiff CITIFINANCIAL AKA WASHINGTON MUTUAL FINANCE Judgment Date 11-18-04

Address: 1461 GATEWAY DRIVE
OPELIKA, AL 36801

Attorney: _____

v.

Defendant BROOKA STOKES

Address: _____

Attorney: HON. JAMES T. GULLAGE

Judgment	\$ 0.00
Costs	\$ _____
Other: _____	\$ _____
Total	\$ 0.00

Judgment Rendered in Favor of: ☐ Plaintiff ☒ Defendant

Judgment:

<input type="checkbox"/> Default <input type="checkbox"/> Dismissal <input type="checkbox"/> Detinue <input checked="" type="checkbox"/> Other _____ TRIAL	<input type="checkbox"/> Consent <input type="checkbox"/> Workmen's Comp. <input type="checkbox"/> Unlawful Detainer
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(Give details below)

VERDICT FOR DEFENDANT IN THE AMOUNT OF \$350.00 ON HER COUNTERCLAIM.

Judgment Conditions:

<input type="checkbox"/> With Waiver of Exemptions <input type="checkbox"/> With Prejudice	<input type="checkbox"/> Without Waiver of Exemptions <input type="checkbox"/> Without Prejudice
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Certified As A True Copy:

Clerk/Register

Date

Man
Judge/Clerk/Register

FILED

NOV 22 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

PLEASE NOTE: If you disagree with this Judgment (decision), you can appeal by filing a "Notice of Appeal" Form with the clerk of this court within _____ days after the date of this Judgment. See the clerk for further information.

Exhibit 1

COURT COPY: Original	PLAINTIFF: Copy	DEFENDANT: Copy
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STATEMENT OF CLAIM

(Complaint)

General

Case Number

SM-04-1513

Rev. 3/95

ALL CLAIMS COURT OF

LEE

(Name of County)

ALABAMA

CITIFINANCIAL AKA WASHINGTON

v.

BROOKA STOKES

Plaintiff MUTUAL FINANCE

Defendant

Plaintiff's
Home Address1461 GATEWAY DR.
OPELIKA, AL. 36301Defendant's
Home Address3301 OAKDALE DR
OPELIKA, AL. 36301Plaintiff's Attorney's
Address745-7668 called
Nov 1, 04Additional
Defendant(s)
and Addresses

749-0775

NOTICE TO EACH DEFENDANT - READ CAREFULLY

YOU ARE BEING SUED IN THE SMALL CLAIMS COURT BY THE PLAINTIFF(S) SHOWN ABOVE. THE JUDGE HAS NOT YET MADE ANY DECISION IN THIS CASE, AND YOU HAVE THE RIGHT TO A TRIAL TO TELL YOUR SIDE.

HOWEVER, IF YOU, OR YOUR LAWYER, FAIL TO FILL OUT THE ENCLOSED ANSWER FORM AND DELIVER OR MAIL IT TO THE CLERK AT THE ADDRESS SHOWN BELOW, SO THAT IT WILL GET TO THE CLERK'S OFFICE WITHIN FOURTEEN (14) DAYS AFTER YOU RECEIVE THESE PAPERS, A JUDGMENT CAN BE TAKEN AGAINST YOU FOR THE MONEY OR PROPERTY DEMANDED IN THE FOLLOWING COMPLAINT. ONCE A JUDGMENT HAS BEEN ENTERED AGAINST YOU, YOUR PAYCHECK CAN BE GARNISHED AND/OR YOUR HOME OR PROPERTY SOLD TO SATISFY THAT JUDGMENT.

COMPLAINT

1. I claim the defendant owes the plaintiff the sum of \$ 936.74 because:

Default ~~in~~ LoanSales Contract

2. Plaintiff also claims from the defendant court costs in the sum of \$ 57.00 (see note below), plus \$ 0 for interest and \$ _____ for lawyers' fees (only if plaintiff is represented by a licensed, practicing attorney and if the contract or note you signed so provides.)

NOTE: The total amount of court costs may be more than this amount when the case is finally settled. The clerk will inform you of any additional costs at the close of the case.

CLERK'S ADDRESS:

CORINNE T. HURST
CIRCUIT CLERK
2311 GATEWAY DR.
ROOM 104
OPELIKA, AL 36864

Plaintiff or Plaintiff's Attorney (Signature)

Attorney Code

334-745-7568

Plaintiff's or Plaintiff's Attorney's Phone Number

Clerk's Phone No. _____

(See instructions on the Back)

Date of Filing

SEP 27 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

Exhibit 2

IN THE SMALL CLAIMS COURT OF LEE COUNTY
STATE OF ALABAMA

CITIFINANCIAL, AKA
WASHINGTON MUTUAL FINANCE
Plaintiff

v.

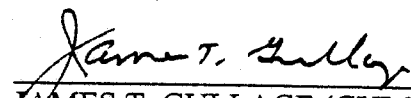
Brooka Stokes,
Defendant

Case No.: SM-04-1513

ANSWER AND COUNTER-CLAIM

COMES NOW, Brooka Stokes, Defendant, by and through her employed attorney and denies that she owes any amount whatsoever to Citifinancial or Washington Mutual Finance, as the debt was paid many months ago. At the time the debt was refinanced and paid, the Defendant was told by the manger that she owed nothing further.

Now having answered the Complaint in this case, the Defendant asserts her Claim against the said Citifinancial, aka Washington Mutual Finance for \$2,500.00 in attorney's fees. The action filed against the Defendant, Brooka Stokes by the Plaintiff is erroneous and false. Therefore, the Plaintiff has forced the Defendant to hire an attorney to represent her in this matter. Therefore, Brooka Stokes claims of the Plaintiff \$2,500.00 as damages for bringing this action knowing that the debt, upon which suit was brought, had been paid.


JAMES T. GULLAGE (GUL002)
ATTORNEY FOR DEFENDANT
700 Avenue D.
Opelika, AL 36801
(334) 749-5115

FILED
NOV - 3 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

OFFICE NAME : AL-041 OPELIKA
ACCT. NO: 00811720 LOAN MK CD: SF I/J: I S: A CSRC: L155 SOL: NS CG: F
CUSTOMER: STOKES BROOKA DOB: 01/22/40 SSN: 456-68-4374

LEDGER CARD
01-0082 900062-0
DNS: E REFERENCE:
PL MAX:

DATE	AMOUNT	LT CHARGE	INTEREST	PRINCIPAL	BALANCE	TRTY	TYPE	METH
03/28/04	\$17.07	\$0.00	\$0.00	\$0.00	\$977.57	BI15		
03/08/04	\$20.00	\$0.00	\$35.82	\$54.18	\$960.50	PY25	ML	CK
02/28/04	\$17.75	\$0.00	\$0.00	\$0.00	\$1,050.50	BI15		
01/28/04	\$18.07	\$0.00	\$0.00	\$0.00	\$1,032.75	BI15		
01/07/04	\$100.00	\$0.00	\$37.85	\$62.15	\$1,014.68	PY25	CT	CK
12/28/03	\$18.84	\$0.00	\$0.00	\$0.00	\$1,114.68	BI15		
11/28/03	\$19.01	\$0.00	\$0.00	\$0.00	\$1,095.84	BI15		
11/04/03	\$70.00	\$0.00	\$19.75	\$50.25	\$1,076.83	PY25	ML	CK
10/28/03	\$19.75	\$0.00	\$0.00	\$0.00	\$1,146.83	BI15		
09/30/03	\$70.00	\$0.00	\$20.66	\$49.34	\$1,127.08	PY25	ML	CK
09/28/03	\$20.66	\$0.00	\$0.00	\$0.00	\$1,197.08	BI15		
09/09/03	\$41.00	\$7.00	\$21.00	\$13.00	\$1,176.42	PY25	ML	CK
08/28/03	\$28.00	\$0.00	\$0.00	\$0.00	\$1,217.42	BI15		
08/11/03	\$70.00	\$0.00	\$43.50	\$26.50	\$1,189.42	PY25	CT	
07/28/03	\$21.27	\$0.00	\$0.00	\$0.00	\$1,259.42	BI15		
06/28/03	\$22.23	\$0.00	\$0.00	\$0.00	\$1,238.15	BI15		
06/13/03	\$136.00	\$0.00	\$23.61	\$112.39	\$1,215.92	PY25	ML	
05/28/03	\$23.61	\$0.00	\$0.00	\$0.00	\$1,351.92	BI15		
05/06/03	\$123.00	\$0.00	\$33.66	\$89.34	\$1,328.31	PY25	ML	
04/28/03	\$24.80	\$0.00	\$0.00	\$0.00	\$1,451.31	BI15		
04/07/03	\$41.00	\$0.00	\$41.00	\$0.00	\$1,426.51	PY25	ML	
03/28/03	\$24.80	\$0.00	\$0.00	\$0.00	\$1,467.51	BI15		
02/28/03	\$25.06	\$0.00	\$0.00	\$0.00	\$1,442.71	BI15		
02/06/03	\$83.00	\$0.00	\$25.80	\$57.20	\$1,417.65	PY25	ML	
01/28/03	\$25.80	\$0.00	\$0.00	\$0.00	\$1,500.65	BI15		
12/28/02	\$0.00	\$0.00	\$0.00	\$0.00	\$1,474.85	BI15		
12/14/02	\$1,474.85	\$0.00	\$0.00	\$0.00	\$0.00	DI05	55	

1,474.85 +
85.00 -
41.00 -
123.00 -
136.00 -
70.00 -
41.00 -
70.00 -
70.00 -
100.00 -
90.00 -
100.00 -
100.85 *

you still owe

cut pymt

*any question
Please call*

*THKS
G. Duncan*

Exhibit 2